

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

J. Kip Fennelly,
Appellant,

v.

Warren County Board of Review,
Appellee.

ORDER

Docket No. 13-91-0290
Parcel No. 48-020-09-0150

On January 27, 2014, the above-captioned appeal came on for hearing before the Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2) and Iowa Administrative Code rules 701-71.21(1) et al. Appellant J. Kip Fennelly was self-represented. Assistant County Attorney Karla J. Fultz is counsel for the Warren County Board of Review. County Assessor Brian Arnold represented it at hearing. The Appeal Board, having reviewed the record and being fully advised, finds:

Findings of Fact

J. Kip Fennelly is the owner of K & L Properties of Warren County, LLC. K & L Properties is the owner of a commercially classified property located at 112 E Ashland Avenue, Indianola, Iowa. The property is a small retail store built in 1960 and located on the town square in the central business district of Indianola. It has 5544 square feet of retail space and 3208 square feet of warehouse space. The site is 0.175 acres. The January 1, 2013, assessment was \$191,100 allocated as \$32,400 in land value and \$158,700 in improvement value.

Fennelly protested to the Board of Review claiming the property was assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), and asserted the correct total value was \$100,000. Although Fennelly marked every available ground on the protest form, he made a

single claim of over-assessment. The Board of Review denied the protest. Fennelly then appealed to this Board reasserting his claim.

Fennelly explained he purchased subject property in February 2013 for \$380,000. The purchase price included four separately parceled commercial buildings on the Indianola town square. Fennelly testified the previous owner had the properties for sale since 2000, and the last listing for the four buildings was \$425,000. (Exhibit A). He testified he did not allocate the purchase price between the four buildings at the time of sale, but now he asserts the subject's value was \$100,000 of the purchase. While the sales price of a property may be an indicator of value, it does not conclusively establish value. Moreover, because the list and sale price of the subject property included multiple parcels, we do not find it indicative of market value for the subject property. It is typical for sales that involve multiple properties to have discounted sales prices.

Fennelly also submitted a structural engineering analysis completed in January 2013 by James E. Tometich of Tometich Engineering, Inc., Urbandale, Iowa. (Exhibit B). The report indicates the subject was in need of a new roof and the exterior insulation finishing system (EIFS) on the front of the building needed to be replaced. (Exhibit B p. 8.). Fennelly testified the roof has been replaced since the report was issued. Tometich's report does not indicate if the EIFS system is a cosmetic or structural repair. Further, he does not indicate whether the conditions affect the value of the subject property. Ultimately, the engineering analysis alone is insufficient evidence of the fair market value of the property, and we give it no consideration.

Finally, Fennelly referenced a property located at 123 N Buxton Street, Indianola, and provided a Beacon printout from the Warren County Assessor's Office. (Exhibit D). He indicates this property is similar to the subject with warehouse space, and it sat vacant for a lengthy period before being recently rented. Because this property has not recently sold, we do not find it relevant to a market value claim.

The certified record includes an appraisal of the subject property that was completed by Patrick D. Bodenhamer of Rally Appraisal, LLC, West Des Moines, Iowa. The appraisal was completed for lending purposes to establish the fair market value of the subject property as of January 17, 2013.

In the appraisal, Bodenhamer states the realtor told him “the seller provided the listing price and was highly motivated to sell the property.” Bodenhamer developed the income and sales comparison approaches to value. For his sales analysis, he considered eight comparable commercial sales in Indianola that occurred between April 2009 and November 2012. Seven of the sales were retail space similar to the subject and one sale was an office space. After adjusting the comparable properties for differences, Bodenhamer concluded an indicated market value of \$24.00 per-square-foot or \$210,000 (rounded). We note sufficient sales data was available for analysis, and it is the preferred method of valuation under the Iowa code.

Bodenhamer also developed the income approach. He analyzed four leases of comparable properties all located within the central business district of Indianola. Based on this analysis, he determined the subject’s actual rent of \$5.58 per-retail-square-foot and \$2.06 per-warehouse-square-foot was market rent, and used the actual rents for the remainder of his analysis. He determined a net operating income (NOI) of \$18,657.52 and a capitalization rate of 9.5%, to conclude a value of \$195,000 based on the income approach.

Bodenhamer gave both the income and sales approaches consideration in his final opinion and determined a fee-simple market value of \$200,000 for the subject property, as of January 17, 2013.

Fennelly dismisses the appraisal because he asserts the appraiser was from West Des Moines and unfamiliar with the Indianola area; had not purchased a home or business in the area; and did not have a copy of the engineering report. We do not find merit in Fennelly’s first two concerns. Regarding the engineering report, Fennelly testified the report and appraisal were done concurrently, but he did make a copy of the engineering report available to the lender prior to the completion of the

appraisal report. He did not know if the lender shared the engineering report with the appraiser. Regardless, the engineering report does not specify costs associated with deferred maintenance it references, or the affect the deferred maintenance had on the value of the subject property.

The Board of Review provided a value summary of the 2013 assessments of the four properties purchased by K & L Properties prior to its actions and after. It also provided an aerial parcel map. Although the evidence provided a visual reference of the subject property, we do not find either relevant to the market value of the subject and give them no consideration.

Conclusion of Law

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin Cnty. Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. §441.21(1)(b). If sales are not available to determine market value then "other factors," such as

income and/or cost, may be considered. § 441.21(2). The property's assessed value shall be one hundred percent of its actual value. § 441.21(1)(a).

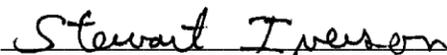
In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). At hearing, Fennelly did not offer any comparable sales or other methods of valuing the subject property, such as an income analysis. Furthermore, we find the best evidence in the record of the subject's fair market value is the Bodenhamer appraisal, which values the subject property at \$200,000 as of January 17, 2013.

THE APPEAL BOARD ORDERS the 2013 assessment of the property located at 112 E Ashland Avenue, Indianola, Iowa is affirmed.

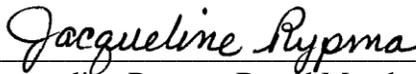
Dated this 18th day of February 2014.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair



Jacqueline Rypma, Board Member

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